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Attorneys for Defendants
VIVUS, INC., LELAND F. WILSON and
WESLEY W. DAY, Ph.D.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MERLE KOVTUN, Individually and on
Behalf of Others Similarly Situated,,

Plaintiff,

v.

VIVUS, INC., LELAND F. WILSON, and
WESLEY W. DAY, PH.D.,

Defendant.

Case No. 4:10-cv-04957-PJH

**STIPULATION AND ~~PROPOSED~~
ORDER SETTING SCHEDULE AND
EXPANDING PAGE LIMITS FOR
BRIEFING ON DEFENDANTS' MOTION
TO DISMISS SECOND AMENDED
COMPLAINT AS MODIFIED BY THE COURT**

The Honorable Phyllis J. Hamilton

Pursuant to Local Rule 7-12, defendants VIVUS, Inc., Leland F. Wilson, and Wesley W. Day, Ph.D. ("Defendants") and Lead Plaintiff John Ingram (collectively, the "Parties"), through their undersigned counsel, hereby stipulate to and seek the Court's approval of an order establishing a schedule and expanding the page limits for briefing on Defendants' anticipated motion to dismiss Lead Plaintiff's Second Amended Complaint for Violations of Federal

1 Securities Laws (the “Second Amended Complaint”).

2 **RECITALS**

3 WHEREAS, on October 12, 2011, the Court heard argument on and granted Defendants’
4 motion to dismiss Lead Plaintiff’s Amended Class Action Complaint for Violations of the Federal
5 Securities Laws with leave to amend within 28 days, which ruling was memorialized in an order
6 entered on October 13, 2011 (Dkt. 40) (the “October 13 Order”);

7 WHEREAS, on November 9, 2011, Lead Plaintiff filed his Second Amended Complaint
8 for Violations of Federal Securities Laws (Dkt. 41) (the “Second Amended Complaint”);

9 WHEREAS, the Court’s October 13 Order granted Defendants 28 days from filing of the
10 Second Amended Complaint within which to respond to the Second Amended Complaint;

11 WHEREAS, Defendants intend to move to dismiss the Second Amended Complaint,
12 which is 182 pages in length;

13 WHEREAS, Defendants believe that, because of the length of the Second Amended
14 Complaint and the upcoming holidays, Defendants will need some additional time and pages to
15 prepare their briefs so that their arguments are set forth in a manner fully responsive to the
16 allegations; and

17 WHEREAS, Lead Plaintiff believes that he will also need additional time and pages to
18 respond fully to Defendants’ motion to dismiss; and

19 WHEREAS, subject to the Court’s approval, the Parties do not oppose the others’
20 proposed timing and page limits for briefing of a motion to dismiss the Second Amended
21 Complaint as set forth below;

22 **STIPULATION**

23 IT IS THEREFORE STIPULATED AND AGREED by the Parties, through their
24 respective counsel of record, subject to the Court’s approval, that the following schedule and page
25 limits for the briefing of Defendants’ anticipated motion to dismiss the Second Amended
26 Complaint will be as follows:

27 (a) Defendants’ opening brief in support of the motion to dismiss shall be filed on or
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1 before December 30, 2011 and shall be no longer than 35 pages;

2 (b) Lead Plaintiff's opposition to Defendants' motion to dismiss shall be filed on or before
3 February 22, 2012 and shall be no longer than 40 pages;

4 (c) Defendants reply brief in support of the motion to dismiss shall be filed on or before
5 March 30, 2012 and shall be no longer than 25 pages; and

6 (d) Defendants' motion to dismiss shall be noticed for hearing on the Court's regular civil
7 law and motion calendar for April 18, 2012.

8 IT IS SO STIPULATED.

9 DATED: November 22, 2011

HOGAN LOVELLS US LLP

11 By /s/ Michael L. Charlson
MICHAEL L. CHARLSON

12 Attorneys for Defendants
13 VIVUS, INC., LELAND F. WILSON and
14 WESLEY W. DAY, Ph.D.

15 DATED: November 22, 2011

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24 By /s/ David A.P. Brower

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Attorneys for Lead Plaintiff

1 I, Michael L. Charlson, am the ECF User whose ID and password are being used to file
2 this Stipulation And [Proposed] Order Setting Schedule and Expanding Page Limits For Briefing
3 on Defendants' Motion To Dismiss Plaintiff's Second Amended Complaint. In compliance with
4 General Order 45, X.B., I hereby attest that David A.P. Brower has concurred in this filing.
5

6 /s/Michael L. Charlson

7 MICHAEL L. CHARLSON

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ORDER

PURSUANT TO STIPULATION, and good cause appearing, the schedule and page limits applicable to briefing on Defendants' anticipated motion to dismiss Lead Plaintiff Second Amended Complaint will be as follows:

(a) Defendants' opening brief in support of the motion to dismiss shall be filed on or before December 30, 2011 and shall be no longer than ~~35~~³⁰ pages;

(b) Lead Plaintiff's opposition to Defendants' motion to dismiss shall be filed on or before February 22, 2012 and shall be no longer than ~~40~~³⁰ pages;

(c) Defendants reply brief in support of the motion to dismiss shall be filed on or before March 30, 2012 and shall be no longer than ~~25~~²⁰ pages; and

(d) Defendants' motion to dismiss shall be noticed for hearing on the Court's regular civil law and motion calendar for April 18, 2012.

IT IS SO ORDERED.

DATED: 11/23/11

